

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK P. CHIAPPARA)

Appearances:

For Appellant: Frank P. Chiappara, in pro. per.
For Respondent: Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Frank P. Chiappara against a proposed assessment of additional personal income tax in the amount of \$238.00 for the year 1975.

Appeal of Frank P. Chiappara

The sole issue for our determination is whether appellant qualified as a head of household for the year 1975.

Appellant, his wife, and his dependent daughter, Helene, lived together until sometime in July of 1975. Because of marital difficulties, appellant and his wife then separated. Helene continued to live with her mother in what had been the family home until sometime in October when she moved into appellant's residence, where she remained throughout the balance of the year 1975. Appellant and his wife obtained a final decree of dissolution of their marriage in October of 1975.

Appellant filed a timely California personal income tax return for 1975, claiming head of household status, naming Helene as qualifying him for such status, and computing his tax liability accordingly.

Respondent determined appellant did not qualify for that status on the ground that Helene did not occupy appellant's household for the entire year. Consequently, respondent re-computed appellant's tax liability on the basis of the rates applicable to single persons. Respondent did allow appellant a dependent exemption credit for Helene, in addition to those he had claimed for his other two children.

Appellant contends that he qualified for head of household status pursuant to the statutory requirements specifically set forth in subdivision (a) (1) of section 17042 of the Revenue and Taxation Code. While respondent's applicable regulation expressly imposes as a condition for such status that the qualifying individual must occupy the taxpayer's household for the entire year, appellant maintains that Helene's absence from his household was a temporary absence due to special circumstances, within the meaning of that regulation. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b) (1).) Where that is the nature of the absence, the qualifying individual is considered as occupying the household for the entire taxable year, pursuant to the regulation.

Appellant also urges, in any event, that the above applicable statutory provision does not require, as a condition of qualification for such status, that the qualifying individual must occupy the household for the entire taxable year. Therefore, he asserts that the regulation is invalid to the extent that it imposes such a condition. Thus, appellant argues that even if Helene's absence from the

Appeal of Frank P. Chiappara

household during the taxable year was not merely a temporary absence due to special circumstances within the meaning of the regulation, appellant still qualified for head of household status.

The term "head of household" is defined in section 17042, in pertinent part:

[A]n individual shall be considered a head of household if, and only if, such individual is not married at the close of his taxable year, and ...

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A ... daughter ... of the taxpayer

In prior appeals we have consistently held that the statute, which requires that the taxpayer's home constitute the principal place of abode of the qualifying individual for the "taxable year," means that such person must occupy the household for the taxpayer's entire taxable year. (Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; see also Appeal of Jose Malberti, Cal. St. Bd. of Equal., Feb. 8, 1979; Appeal of Douglas R. Railey, Cal. St. Bd. of Equal., Aug. 15, 1978; Appeal of Lillian J. Bailey, 1 Cal. St. Bd. of Equal., June 29, 1978; see, construing the similar federal statutory provision (Int. Rev. Code of 1954, §2(b)(1)) David H. Rotroff, ¶ 78,046 P-H Memo. T.C. 1978; Stanback, Jr. v. United States, 39 Am. Fed. Tax. R.2d 77-805 (M.D.N.C. 1977).) In the present appeal appellant's daughter did not physically occupy appellant's household the entire taxable year.

As already indicated, respondent's applicable regulation does provide that the person qualifying a taxpayer as head of household will be "considered as occupying the household for the entire taxable year notwithstanding temporary absences from the household due to special circumstances." It further provides that "a nonpermanent failure to occupy the common abode by reason of illness, education, business, vacation, military service, or a custody agreement under which a child or stepchild is absent for less than six months in the taxable year of the taxpayer shall be considered temporary absence due to special circumstances."

However, the record in this appeal does not establish that Helene's absence during the taxable year

Appeal of Frank P. Chiappara

was merely a temporary absence due to special circumstances. On the contrary, based on the record before us, we conclude that Helene established a permanent place of abode in her mother's home in July of 1975. No showing has been made of any agreement between the spouses whereby Helene was to retain her principal place of abode with appellant in his new home, with her mother merely acquiring temporary custody. (See Stanback, Jr. v. United States, supra; David H. Rotroff, supra; Appeal of Jose Malberti, supra; Appeal of Lillian J. Bailey, supra.)

Thus, we conclude that Helene did not occupy appellant's household for the entire taxable year, within the meaning of the applicable regulation.

The pertinent regulation before us is identical to the corresponding federal regulation. (See Treas. Reg. § 1.2-2(c) (1) (1956).) The validity of the requirement in the regulation that the qualifying individual occupy the taxpayer's household for the entire taxable year has been upheld by the federal courts. (James J. Prendergast, 57 T.C. 475 (1972), affd., 483 F.2d 970 (9th Cir. 1973); see also Stanback, Jr. v. United States, supra.)

Appellant also relies upon the fact that he paid certain hospital bills of the family and supported the children during 1975; While we appreciate appellant's plight, and recognize the inequities which he urges have resulted, the applicable statute and pertinent regulation were correctly applied by respondent. Consequently, we must sustain respondent's action.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Frank P. Chiappara

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Frank P. Chiappara against a proposed assessment of additional personal income tax in the amount of \$238.00 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August, 1979, by the State Board of Equalization.

William W. Bennett, Chairman
Ernest Norrmberg Jr., Member
Ronald H. Hays, Member
Jack H. Hays, Member
_____, Member